

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

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#### Revenue Department

##### Notification

##### No. 22/3/87-RD

Whereas by Government Notification No. 22/3/87-RD dated 4-5-87 published on page 187-190 of Series II, No. 16 of the Official Gazette, dated 16-7-87 and in two newspapers (1) Navhind Times dated 13-6-87 (2) Rashtramat dated 12-5-87 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land, specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for construction of road from Naikabhat to Gailawado road in V. P. Sao Jose de Areal.

And Whereas, the appropriate Government (hereinafter referred to as "the Government"), after considering the report made under sub-section (2) of section 5A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, Therefore, the Government hereby declares, under section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of section 3 of the said Act, the Land Acquisition Officer, PWD (Cell) Altinho, Panaji to perform the functions of a Collector South Goa District, Margao for all proceedings hereinafter to be taken in respect of the said land, and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Land Acquisition Officer, PWD (Cell) Altinho, Panaji till the award is made under Section 11.

#### SCHEDULE

(Description of the said land)

Taluka: Salcete

Village: Sao Jose de Areal

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
1/ 1 part	Igreja of St. Jose de Areal.	1425.00
312/ 4 part	Jusico Mariano Piedade Barreto.	400.00
306/ 1 part	Joaquim Dias.	370.00
" / 2 part	Comunidade of Curtorim.	450.00
" / 3 part	— do —	130.00
291/ 6 part	— do —	475.00
291/ 7 part	— do —	310.00
291/ 8 part	— do —	115.00
69/ 1 part	Francisco Dustino Fernandes.	330.00
73/ 1 part	Camilo Sevenio Piedade Rodrigues.	480.00
67/ 1 part	Manuel Costa.	125.00
75/41 part	Floriano Jesus dos Milagres Rodrigues.	915.00
76/ 3 part	Maria Julia Elenicio Rodrigues.	60.00
" / 4 part	— do —	50.00
" / 1 part	Rurina D'Costa.	560.00
" / 2 part	Maria Julia Elenicio Rodrigues.	1600.00

1	2	3
195 part	Caitano Fernandes and Rosario Agostinho D'Cunha.	2600.00
103/ 1 part	Angelo D'Costa.	325.00
" / 2 part	— do —	825.00
102/ 1	— do —	125.00
" / 2	— do —	100.00
" / 3	— do —	100.00
" / 4	— do —	100.00
" / 5	— do —	100.00
" / 6	— do —	100.00
" / 7	— do —	100.00
" / 8	— do —	100.00
" / 9	— do —	100.00
" / 10	— do —	100.00
" / 11	— do —	50.00
" / 12	— do —	50.00
" / 13	— do —	25.00
" / 14	— do —	25.00
" / 15	— do —	25.00
102/16	Angelo D'Costa.	25.00
" / 17	— do —	25.00
" / 18	— do —	25.00
" / 19	— do —	50.00
" / 20	— do —	50.00
" / 21	— do —	50.00
" / 22	— do —	25.00
" / 23	— do —	25.00
" / 24	— do —	25.00
" / 25	— do —	25.00
" / 26	— do —	25.00
99/ 1 part	— do —	2600.00
107/ 1 part	Inacio Lawrence.	235.00
" / 3 part	A. Madgaonkar.	275.00
" / 4 part	Caitano Fernandes.	100.00
116/ 1 part	Pedrina Estibeiro.	500.00
115/10 part	— do —	275.00
Taluka: Salcete		Village: Dicarpace
7/ 5 part	Erneu Vaz.	85.00
7/ 8 part	Comunidade of Dicarpace.	180.00
8/ 1 part	Erneu Vaz.	100.00
" / 2 part	Comunidade of Dicarpace.	110.00
" / 3 part	— do —	50.00
" / 4 part	— do —	20.00
" / 5 part	— do —	60.00
" / 6 part	— do —	35.00
" / 15 part	— do —	26.00
" / 16 part	— do —	10.00
9/ 5 part	— do —	570.00
27 part	Erneu Vaz.	10.00
Boundaries:		
North: S. No. 7/5 of Dicarpace village S. No. 308/0, S. No. 306/1, 2, 3, 312/4 road, 68/0.		
South: Central railwayline and 118/18 of village Sao Jose de Areal, No. 290/4, to 7 of village Sao Jose de Areal, S. No. 7/5 & 6, 306/1 to 3, 312/4, 69/1, 75/174, 76/3, 4, 2 106/0, 108/1, 2, 102/29 to 41, 27, 28, 99/1.		
East: S. No. 291/8 of village Sao Jose de Areal, S. No. 8/1 to 6 and 7/5 & 6 of village Dicarpace, S. No. 306/1 to 4 312/4, 1/1 75/174, 84/0, 106/0, road 120/1 all of village Sao Jose de Areal.		

1	2	3
	West: S. No. 291/6 of village Sao Jose de Areal S. No. 7/5 & 6 and 9/5 of village Dicarpale, S. No. 306/1 to 3, 308/0, 312/4, 1/1, road 67/1, 75/25, 106/0, 107/1, 38 all of village Sao Jose de Areal.	
	Total .....	18336.00

By order and in the name of the Governor of Goa.

D. V. Sathe, Under Secretary (Revenue).

Panaji, 15th June, 1988.

#### Notification

No. 22/194/84-RD

Whereas by Government Notification No. 22/194/84-RD dated 28-5-87 published on page 272 of Series II, No. 20 of the Official Gazette, dated 13-8-87 and in two newspapers (1) Novem Goem dated 7-7-87 (2) Herald dated 7-7-87 it was notified under section 4 of the Land Acquisition Act 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for construction of drainage for effluent disposal of Margao Industrial Estate at St. Jose de Areal.

And Whereas, the appropriate Government (hereinafter referred to as "the Government"), after considering the report made under sub-section (2) of section 5A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to "the said land").

Now, Therefore, the Government hereby declares, under section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of section 3 of the said Act, the Deputy Collector (LA) Collector of South Goa, Margao to perform the functions of a Collector South Goa District, Margao for all proceedings hereinafter to be taken in respect of the said land, and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Deputy Collector (LA) Collector of South Goa Margao till the award is made under section 11.

#### SCHEDULE

(Description of the said land)

Taluka: Salcete

Village: Sao Jose de Areal

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
152/20 part	1. Tito Pascoal Thomas Does Reis Falcao. 2. Dr. Ciliano Antonio Does Reis Falcao. 3. Rocky Antonio Jose de Maria Milagres Does Reis Falcao. 4. Ermich Firdinando Antonio Does Reis Falcao. T: Beatrice Mateus.	15.00
" /10 part	T: Diago Mateus. — do —	20.00
" /12 part	T: Jose Fernandes. — do —	20.00
" / 8 part	T: Jose Fernandes. — do —	20.00
" / 4 part	T: Sebastiao Carvalho. — do —	5.00
" / 3 part	— do —	5.00
" / 5 part	T: Beatrice Mateus. — do —	10.00
" / 2 part	T: Jose Fernandes.	30.00

1	2	3
152/ 1 part	— do —	30.00
150/ 1 part	T: Diogo Mateus.	30.00
" / 5 part	Adelina Denish.	15.00
	Adelina Denis.	20.00
" / 4 part	T: Minguet Pereira.	
	Adelina Denish.	60.00
" / 3 part	T: Sebastiao Fernandes.	
	Adelina Denish.	330.00
152/58 part	T: Andrew Pereira.	
	1. Tito Pascoal Thomas Does Reis Falcao.	5.00
	2. Dr. Ciliano Antonio Does Reis Falcao.	
	3. Rocky Antonio Jose de Maria Milagres Does Reis Falcao.	
	4. Ermich Ferdinando Antonio Does Reis Falcao.	
" /52 part	— do —	16.00
" /53 part	T: Sebastiao Carvalho. — do —	5.00
152/48 part	T: Beatrice Mateus.	
	1. Tito Pascoal Thomas Does Reis Falcao.	16.00
	2. Dr. Ciliano Antonio Does Reis Falcao.	
	3. Rocky Antonio Jose de Maria Milagres Does Reis Falcao.	
	4. Ermich Ferdinando Antonio Does Reis Falcao.	
" /41 part	T: Diago Mateus. — do —	5.00
" /42 part	T: Beatrice Mateus. — do —	20.00
" /40 part	T: Jose Fernandes. — do —	20.00
" /26 part	T: Sebastiao Carvalho. — do —	10.00
" /35 part	— do —	10.00
" /31 part	T: Beatrice Mateus. — do —	30.00
" /27 part	T: Jose Fernandes. — do —	30.00
" /28 part	T: Sebastiao Carvalho. — do —	5.00
" /19 part	T: Beatrice Mateus. — do —	20.00
150/ 2 part	T: Sebastiao Carvalho. Adelina Denish.	115.00
	T: Domingo Firegueria.	
	Boundaries:	
	North: S. No. 152/92 47, 48, 41, 42, 40, 26, 35, 31, 27, 19, 20, 10, 12, 8, 4, 3, 2, 1, 151/4, 150/1, 5, 4, 3, 2.	
	South: S. No. 152/58, 52, 53, 48, 42, 40, 35, 31, 27, 28, 19, 20, 10, 12, 8, 5, 2, 1, 150/1, 5, 4, 3,	
	East: S. No. 140/0.	
	West: Nala.	
	Total .....	887.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 13th June, 1988.

#### Notification

No. 22/20/87-RD

Whereas by Government Notification No. 22/20/87-RD dated 4-4-87 published on page 172-173 of Series, II, No. 14 of the Official Gazette dated 2-7-87 and in two newspapers (i) Navhind Times dated 10-5-87 and (ii) Navprabha dated 9-6-87 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was likely to be needed for public purpose, viz. Land Acquisition for work of deepening and improvement to Bhavan Tank at Pallem in Pernem Taluka.

And whereas, the Government being of the opinion that the acquisition of the said land is urgently necessary, hereby applies the provisions of sub-section (1) and sub-section (4) of section 17 of the said Act and directs that the Collector appointed under paragraph 2 below shall, at any time, on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of section 9 of the said Act, take possession of the said land.

Now therefore, the Government hereby declares under the provisions of section 6 of the said Act, that the said land is required for the public purpose specified above.

2. The Government also hereby appoints under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer (North) Duler Mapusa to perform the functions of the Collector, North Goa District Panaji for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer (North) Duler Mapusa till the award is made under section 11.

**SCHEDULE**  
(Description of the said land)

*Taluka:* Pernem

*Village:* Paliem

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
61/1 part	<p>Shri Raghuraji Vassudev Deshpabhu. 375.00</p> <p>Tenant:</p> <p>Shri Dattaram Mahadev Naik.</p> <p>" Atmaram Bapu Naik.</p> <p>" Vaman Raghoba Naik.</p> <p>" Arjun Raghoba Naik.</p> <p>" Anant Raghoba Naik.</p> <p>" Shiva Raghoba Naik.</p> <p>" Laxman Raghoba Naik.</p> <p>" Pandurang Laxman Naik.</p> <p>" Shivram Vithu Naik.</p> <p>" Shantaram Yesso Naik.</p> <p>Other rights:</p> <p>Shri Kanoba Babu Tulsakar.</p> <p>" Pandurang Laxman Naik.</p> <p>" Anant Raghoba Naik.</p> <p>" Shiva Raghoba Naik.</p> <p>" Vaman Raghoba Naik.</p> <p>" Arjun Raghoba Naik.</p> <p>" Sakham Gopal Naik.</p> <p>" Bapu Atmaram Naik.</p> <p>" Shashikant Vishnu Naik.</p> <p>" Shivram Vithal Naik.</p> <p>" Shantaram Yesso Naik.</p> <p>North: S. No. 61/1, 65/5.</p> <p>South: S. No. 61/1.</p> <p>East: S. No. 95.</p> <p>West: S. No. 61/1.</p>	
	Total .....	375.00

By order and in the name of the Governor of Goa.

*D. V. Sathe*, Under Secretary (Revenue).

Panaji, 15th June, 1988.

**Department of Labour**

Order

No. 28/24/84-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

*Subhash V. Elekar*, Under Secretary (Industries and Labour).

Panaji, 6th April, 1988.

**IN THE INDUSTRIAL TRIBUNAL GOVERNMENT  
OF GOA AT PANAJI**

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Reference No. IT/43/84

Shri Dilip Bhandodkar

— Workman/Party I

V/s.

M/s. Small Industries Service Institute — Employer/Party II  
Co-op. Stores.

The Party No. I is represented by Adv. P. J. Kamat.

The Party No. II is represented by Shri K. N. Rao, Labour  
Consultant:

Panaji, Dated: 3-3-1988.

**AWARD**

This is a reference made by the Government of Goa, by its order No. 28/24/84-ILD dated 25th July, 1984 with an annexure schedule thereto which reads as follows:

"Whether the action of the management of M/s. Small Industrial Services Institute Co-operative Stores Limited, Dando, Margao, Salcete-Goa, in terminating the services of their workman, Shri Dilip Bhandodkar, Clerk w.e.f. 1-3-1984 is legal and justified?"

If not, to what relief the workman is entitled to?"

2. This reference was made at the instance of the worker who is hereinafter referred to a Party No. I and this reference is against the employer who is hereinafter referred to as Party No. II. The termination of the services was with effect from 1-3-1984 and this termination is challenged by the workman on the ground that the order of termination is illegal and the same is not justified in the circumstances of the case.

After the registration of the case, notices were served on the parties and the parties have filed their written statements and on going through the written statement my Predecessor found that one more additional issue was needed and he framed the following issue as additional issue:

"Whether the workman proves that the termination of his services by the employer amounts to retrenchment?"

This issue is framed on the basis of the submission made by the workman that the notice of termination amounts to retrenchment attracting Sec. 2(oo) read with Sec. 25F of the Industrial Disputes Act, 1947. In order to properly understand the rival contentions of the parties and the circumstances leading to the termination of the services of Party No. I it would be necessary at this stage to briefly recapitulate the facts of the case and the circumstances leading to the termination of the services of the Party I/Workman. While considering the facts it has also to be seen whether the termination amounts to retrenchment within the meaning of the Section 25F of the Act.

The Party No. II is a Co-operative Stores (Society) of the Central Government employees at Margao. The Central Government employees formed an organisation in 1964 and this organisation is known as M/s. Small Industries Services Institute Co-operative Stores Ltd., and decided to start two fair price shops of food grains which was mainly to cater to the needs of its members who were the Central Government employees. Stores used to sell controlled commodities as well as non-controlled to the Central Govt. Employees and the Civil Supply Department had authorised to lift the necessary food grains, sugar etc., from its godown at Cortalim and the two shops were run by the Society for selling the controlled and non-controlled goods to its members. Both the shops were situated at Margao one at Audi Mapari building where there are 3 employees namely a clerk, billing clerk and weighman and the second shop is in a small room near Hospicio Hospital where there are 2 employees namely a clerk and a weighman. At the relevant time in 1984 the Party No. I was working as a clerk and besides selling the commodities to the card holders his duty was to receive the cash, to deposit money in the bank, to prepare bills and to post the things in the ledgers. So far as the shop was concerned the Party No. I/clerk was in charge of the same and the working of the shop was periodically supervised by the Secretary whose name is given as Tulshidas Rajan Narvenkar who is examined as a witness in the case on behalf of Party No. II. The Party No. I Dilip Bhandodkar has also examined himself as witness and it would be proper to study what he has to say in his evidence.

In his evidence recorded on 20-1-1988, Party No. I, Dilip Bhandodkar states that after the initial appointment in Feb., '77 he worked as a weighman for a period of over one year and thereafter by the letter Exb. W-A he was promoted and appointed as a clerk. The letter Exb.W-5 by which his services were terminated is dated 1st March, '84 and at that time he was getting salary of Rs. 375/- per month. According to him he was removed from services without assigning any reason and the management did not give him the salary of one month or retrenchment compensation considering his continuous services of more than 7 years. He has made a grievance that the management did not care to inform him why his services were being terminated. As the termination was arbitrary and illegal he approached the Government and the Govt. in turn referred the matter to this Tribunal. In the meantime he had correspondence with the Society and some of the letters are brought on record. What he says in cross examination will throw some light about the circumstances under which his services were terminated. In his cross examination it has been specifically suggested to him that when the Secretary, Narvenkar took a surprise check of the shop on 17-2-84 he had kept a hand bag containing 30 Kgs. of super fine rice near the weighing scale. While denying this suggestion he had admitted that a hand bag containing 15 Kgs. of rice was kept near the weighing scale and this matter was referred to the Managing Committee on 29-2-1984. This is the first instance of misconduct suggested to him in the cross examination and partly admitted by him. Earlier to this incident there was another incident wherein shortage of sugar was found. When questioned about this he stated that he cannot say anything about the shortage of sugar because at the time of the incident he was just a weighman. It is further suggested to him that after working as a billing clerk and after calculating the money he was not depositing the money promptly in the bank. In order to over come this suggestion he has stated that he was giving the money to the Secretary and it was the duty of the Secretary to deposit it in the bank. This statement is not supported by any record and considering the nature of the duties of the clerk it has to be inferred that it was his duty to deposit the money in the bank. It was also further put up to him that there was a shortage of Rs. 4,407.85 during the period from July'82 to January, '84. The workman feigns ignorance about this suggestion by simply stating that no letters nor any memo was issued to him. Upon a careful scrutiny of evidence on the record it has to be noted that no specific charge regarding the shortage of Rs. 4,407.85 was levelled against the workman before the termination of his services because this fact is realised in the audit report subsequently made by Shri Y. S. Manerkar, Asstt. Registrar of Coop. Societies, which is at Exb.E-11. Further on the basis of the audit report dated 18th Sept.'82 the Secretary Mr. Narvenkar has issued a memo to Party No. I on 12th April '84 giving the details of 19 items of shortage the total of which comes to Rs. 4,407.85. In this regard it was to be noted that the action of the management in issuing a memo to Party No. I Exb.E-11 is a belated action in as much as the services of Party No. I were terminated w.e.f. 1-3-84. Hence whatever action was taken against the Party No. I Workman including the issuance of memo ought to have been given to him before the termination of his services. This has not been done and the effect of this will be considered by me. Presently, I am dealing with the aspect whether alleged acts of mis-conduct are brought home to the workman/Party No. I. There are 2 specific instances of mis-conduct namely the attempt to smuggle rice from the fair price shop and the shortage of sugar noticed on 11-2-82.

About these two instances there is the evidence of documents and I shall go through the evidence one after the other. To start with I shall deal with the memo issued by the Secretary, T. R. Narvenkar dated 1st March, 1984, Exb.W-5. This is a memo which is in fact the letter of termination of services wherein the Secretary has given a reference to the decision taken by the Managing Committee in the meeting held on 29-2-1984 wherein it was unanimously decided that his services should be terminated w.e.f. 1st March, '84. In the same letter the workman is offered one month's salary. Before the issuance of this memo there are 2 more memos which are dated 18-2-84 — Exb. W-3 and 23-2-84, Exb.W-4. In the first memo the Secretary, Narvenkar has charged that the clerk Dilip Bhandodkar of the Stores had un-authorisidely tried to remove from the stores about 30 Kgs. of super fine rice on the earlier day viz. 17-2-84 at 2.30 p.m. as he was caught, red handed in the surprise check. The Secretary at the time of the surprise check was surprised to note that this had happened when the sales clerk Maria was absent and when there were no customers in

the shop at that time. In view of this typical situation he has called for explanation of the clerk by a memo dated 18-2-1984 and what the clerk states in this would be relevant for consideration at this stage. The clerk states that the bag contained 15 Kgs. of super fine rice was kept aside as alleged in the memo. In order to come out of the situation he had the nerve to allege that it is the Secretary who had asked him to keep aside that much quantity of rice and he had acted at the instance of the Secretary and when he subsequently refused to allow him to take away the rice the Secretary falsely levelled the charge against him. This clearly seems to be an after thought and it cannot be accepted that the Secretary would stoop so low to get the small favour through his subordinate in this fashion. Much elaboration on this is not needed and suffice it to note that if the Secretary really needed the rice he had other ways and means to lift the same from the shop or the Society Office as he was in over all control of the things. The conduct of the workman has also to be considered in the light of his admissions as regards an earlier incident of the shortage of sugar dated 11-2-82. About this shortage the explanation of the workman was called for and the workman has given his statement in writing which is of the same date. The statement is addressed to the Chairman of the Coop. Stores and here the workman admits that on 30-1-1982 he had given 2,400 Kgs. of sugar to one of his friends without making the bill before giving the sugar to him. At that time the Chairman visited the Stores and the shortage was noticed. While admitting this incident the workman has further stated that subsequent to the checking he prepared the bill for the said quantity of sugar to make amends to his lapses. While admitting this he further stated that it was a mistake on his part and presumably he asked for for-giveness. In the concluding para he has assured the Chairman that he will not repeat such lapses on his part and he has asked for pardon on the above mistake. While admitting that this explanation in English is in his own handwriting the workman now wants us to believe that this statement was dictated to him by the Secretary and he wrote the same by under duress. This statement is also an after thought and it has to be accepted as a proven fact that the previous lapses on his part were brought home to him and he was confronted with the things and he had admitted his mis-conduct in the 2 incidents.

Along with the above 2 incidents the management has some more instances to allege against the workman and the instances are listed as below:

1. Irregular attendance
2. Unauthorised absence
3. Selling essential controlled commodities to non card holders and keeping money for himself.
4. Selling ration items to non card holders.
5. Unauthorised removal of control & non control items from the stores. Indulging in thefts of ration items.
6. Misbehaviour and rude behaviour with card holders specially female card holders.
7. Giving less weights in selling i.e. cheating public.
8. Not discharging duties properly-negligence of duties.
9. He was responsible for lot of short sales and shortages and resultant loss to the Society.
10. His overall service is totally not satisfactory.
11. He is beyond correction.
12. His integrity is highly doubtful.

It has to be noted that these instances are not just wild allegations but there is record to support some of the charges. For instance about charge No. 6, there is a memo of the then Secretary, V. K. Bharathan dated 19th December, '81 wherein he has warned the workman that a number of complaints both oral and written were received from the lady customers of the Society regarding the mis-behaviour with them, while they had come to the shop for lifting their ration quota. There is also the audit report where the shortages are listed. There is then the extract of the meeting of the Managing Committee held on 29-2-84 where in the Managing Committee has considered to the conduct of the workman Bhandodkar namely he being caught red handed on 17-2-82 while trying to remove about 30 Kgs. of rice along with the previous objectionable acts such as selling goods without billing, taking away substantive quantity without prior permission etc. The previous Chairman and Secretary had also found instances of misconduct and the workman Bhandodkar was earlier warned on many occasions and still the Committee did not find any improvement in the act and conduct of the workman who was promoted

from weighman to the post of a clerk. There is then the explanation of the workman Exb-E-4 dated 18th Feb., '84 regarding the incident of superfine rice wherein the workman admits that on the earlier dated viz. 17-2-84 after opening the shop at 2.30 p.m. he had seen some good super fine rice and he had filled 15 Kgs. of rice in a bag for his home consumption and he felt that after closing of the shop he would take the permission of the Secretary and he would take the rice home after making the bill. According to him the very explanation was given by him to the Secretary. In the letter he admits his mistake and assures that he will not repeat the same.

Upon an overall consideration of the admissions of the Party No. I/Workman and the evidence on record it is to be presumed that this is a case of loss of confidence and as there was no confidence left in the workman who had not shown any improvement the Secretary in desperation reported the matter to the Managing Committee which took cognizance of the same and passed the impugned resolution dated 29-2-84 and subsequently the Secretary observed the formality of issuing the memo dated 1st March, '84 informing the workman of the decision taken by the Managing Committee in the meeting held on 29-2-84 and informing him that his services stood terminated w.e.f. 1-3-1984. In this notice one month's salary is also offered to the workman in lieu of notice of termination.

While contraverting the allegations of the management the first point made out by the workman is that the management has not issued charge sheet nor any show cause notice to him nor conducted any enquiry against him before the termination of his services. According to him he has neither resigned from the post nor he retired attaining the age of retirement and as such the termination of services is bad in law. According to him he has not committed acts of misconduct warranting his termination. He further claims that his case is governed by the provisions of the Shop Act, 1973 and rules framed thereunder in 1975. Placing reliance on Sec. 39 of the Act he claims that without a reasonable cause and except for mis-conduct his services cannot be terminated without giving one month's notice, salary and gratuity etc. He also specifically denies the charges levelled against him. He also denies the contents of the so called admissions before the Secretary or the management. He further claims that about his first lapse he was given a warning and hence subsequently he cannot be punished for the same mis-conduct which amounts to twice punishment for the same offence even if the alleged mis-conduct is held proved. He therefore claims that his termination is bad in law and the termination amounts to retrenchment and there was no scope for the management to adhere to retrenchment.

With rival contentions on record and with the main issue under reference my Predecessor framed another issue touching the contentions of the workman besides the main reference by the Government which is stated in the earlier paragraphs.

I shall go on considering these issues together and the first thing to be taken into consideration is whether the action of the management in terminating the services of Party No. I/Workman is legal and justified. I have already recapitulated the facts and series of allegations which the management held to be proved against the workman & without repeating the same facts I shall briefly take resume of the overall circumstances to understand the case of the management and see whether the action of the management in terminating the services of the workman is justified in the circumstances of the case and whether the action is legal and is according to the provisions of law. It appears that this is a case of loss of confidence and the management who was dealing with the past conduct of the workman for over 4 years felt that the workman who was initially working as a weighman and who was subsequently promoted as a billing clerk, entrusted with the work of the sale of the commodities of the fair price shop was no a trustworthy person and the last two incidents in close succession had further fortified the belief of the management and this is how this appears to be a case of loss of confidence of the management.

Adverting then to the conduct of the workman regarding the two instances of shortage of sugar and attempt to take away 30 Kgs. of superfine rice from the shop and he being caught red handed, I find that this is not wild allegations but there is cogent evidence supporting the stand of the management. Not only that, the management has proved the facts by evidence of the Secretary and there are the admissions

of the workman who was called upon to give his explanation and he has meekly submitted to the allegations and while admitting the allegations substantially he had asked for pardon. The Secretary who was initially dealing with the two incidents felt that the explanation of the workman was far from satisfactory and as such he made a report to the Managing Committee and the Managing Committee taking a serious view of the matter took a decision on 29-2-84 to the effect that the services of the workman, Dilip Bandodkar should be terminated. The Secretary who was working as an agency of the management issued a memo Exb-W-5 dated 1st March 1984 to the workman informing him the decision taken by the management and as the order of termination was to be operative with immediate effect he was offered one month's salary in lieu to the notice of termination. These are the broad facts and the workman has not been able to contravert the same. His only submission is that he was initially pardoned for the mis-conduct and he would be punished twice for the same misconduct and for this reliance is placed on Supreme Court, Labour Judgment reported at page 97, in Vol. VIII of 1950-83. I find that facts of that case are clearly distinguishable and not applicable to the facts of the present case. After a careful scrutiny of the evidence on record I do not find any documents showing that the lapses on the part of Dilip Bandodkar were any time earlier pardoned by the Secretary or the management. It appears that because a warning was given to him the submission is made on behalf of the workman to state that this amounts to punishment by way of warning. I do not accept this proposition because the warning is regarding the general conduct and behaviour of the workman in the day to day activities in the fair price shop. What is predominately to be considered in this case is series of acts of mis-conduct on the part of the workman culminating in the management's taking a decision of terminating his services mainly on the ground of loss of confidence in the workman. I feel that the totality of the events has to be taken into consideration to see whether the action is proper and justified in the circumstances of the case and I find that the action is proper and the management was no bias against the workman but it was constrained to take the decision in view of the series of events showing the mis-conduct of the workman. Passingly, a reference has to be made to the allegations by the workman that the Secretary had asked him to provide 15 Kgs. of superfine rice without following any procedure and upon his failure to do so he incurred wrath of the Secretary. I find that this allegation is wild allegation and this is an after thought. Be it noted here pertinently that the workman was caught red handed while attempting to take away 30 Kgs. of superfine rice (according to workman 15 Kgs) and Secretary issued him a notice calling for explanation and in the explanation the workman not only admitted the proposed attempt but asked for pardon by the Secretary. However, subsequently while making his claim statement he developed a case that the Secretary had asked for the rice and he refused to give him and this is clearly an after thought. This fact has to be considered along with the earlier incidence regarding which the explanation Exb. W-7 is given by the workman on 11-2-82. Therein the workman in his own hand writing admits that while the Chairman visited the shop on 30th Jan., 1982 he had found that workman had given 2:400 Kgs. of sugar to one of his friends without making the bill and at the moment the chairman visited the shop. While admitting this incidence the workman offers his explanation to the effect that subsequently he prepared the bill for the said quantity of sugar. This may be an attempt to make amends to the earlier lapses but the fact of mis-conduct is clearly brought on record. The workman while admitting this incidence states that it was a mistake on his part. It appears that Shri P. J. Kamat for the workman wants to rely on this admission to state that this singular lapse on the part of the workman was pardoned by the management and as such he cannot be penalised twice for the offence. I find that this is an admission of the workman but there is nothing to show that the management or Secretary had pardoned this lapse on the part of the workman. However, even if it is held that the particular lapse was pardoned by the management still the action of the management is not based alone on this incident but it based on the further incidence of the attempt to lift superfine rice from the fair price shop, the behaviour of the workman with the customers and the incidence of shortages brought to the notice of the management during the course of audit and the audit report is at Exb. E-11.

The Audit Report is conducted by Vaman Sardesai, Registrar of Coop. Societies of Goa. We are not directly concerned with the details of the audit report because the audit report points to the shortages in the fair price shop



and the management is called upon to take steps to recover the loss from the workman who would be responsible to account for the shortages. According to the management as stated by Shri K. N. Rao for the management the audit report pertains to the period of 1982 to 1984 and the total shortages came to Rs. 4407.85 and this much amount was recoverable from the Party No. I/Workman. When asked to elaborate whether the management has issued any notice to the workman asking him to reimburse the shortages he did concede that no such claim was made out but while considering the payment of notice pay/salary for Feb., '84, Gratuity etc., to be paid to the workman after the termination of his services the management found that the total claim of the workman at the time of the termination of his services came to Rs. 3907.50 while the amount recoverable on account of shortages came to Rs. 4407.85 and as such an amount of Rs. 500.35 was outstanding from the workman. This is now according to him nothing was to be paid to the workman at the time of the termination of his services but on the contrary some amount was recoverable from the workman. I find that this way of calculation is rather for fetched and the management had not taken proper steps at the proper time and if the workman was called upon to account for the shortages before the termination of his services the position would be rather different. Hence, I feel that the management cannot club shortages to the legitimate dues which the workman is entitled to at the time of the termination of his services.

Adverting then to the submissions made on behalf of the workman Shri Kamat re-submitted before me that the workman is entitled not only for retrenchment compensation but he is entitled to something more and it is common ground that the workman was entitled to the following dues at the time of termination of his services.

1. Rs. 375/- — salary for Feb., '84.
2. Rs. 375/- — salary in lieu of one month's notice.
3. Rs. 375/- — leave wages.
4. Rs. 1312.50 — retrenchment compensation.
5. Rs. 1470.00 — Gratuity.

Rs. 3907.50 — Total.

It is a common ground that this much amount was legitimately due to the workman at the time of termination of his services as already observed in the foregoing paragraphs. The management cannot club the shortages with this legitimate dues of the workman and at the initial stage only I hold that the workman is entitled to get Rs. 3907.50 as the legitimate dues in the event of his termination of services.

This then brings me to the consideration of legality or otherwise of the order of termination and whether this amounts to retrenchment as claimed on behalf of the workman or whether this is the action of the management upon a overall consideration of the mis-conduct of the workman on the ground that there was a loss of confidence. I have already studied the facts in the foregoing paragraphs and along with the facts I shall study the legal position to see whether the action of the management is just and legal in the circumstances of the case.

I shall now study the legal position with reference to a Supreme Court Judgment on the point of termination of services reported in 1972 (24 F.L.R. page 229). In this ruling the question regarding the termination of the services of a workman and whether the same amounted to retrenchment or whether termination by way of victimisation came to be discussed and the facts in that case which are almost similar can be stated briefly. The workman who was employed as the Head Godown Clerk for the Engineering Godown of the Sudder Office of the Company had wrongfully sent some pulleys belonging to the Company to a wrong place and the driver had not produced the chalan for clearing the goods from the Engineering Office. The main office had to call back the pulleys to the office for which they were meant. The enquiry was held about the circumstances under which the three pulleys were sent to a wrong place and the explanation given by the workman for removal of the goods from the Engineering Godown was not found satisfactory and charge sheet was served on him and it was alleged that he had committed a mis-conduct in doing so. An enquiry was held in the matter and the Company decided to terminate the services of the employee and while terminating the services he was informed that he will be paid one month's salary in lieu of notice and other wages due to him. This order of termination of services was challenged by the workman in the

Labour Court which held that the termination was improper and directed the reinstatement of the workman. In appeal the High Court reversed the order of the Labour Court holding that the Labour Court had erred in directing the reinstatement and the action of the management is just and proper. The award of the Labour Court was set aside by holding that the action against the workman had been rightly taken in pursuance of the Standing Orders and the award was set aside. In the appeal to the Supreme Court the same points were discussed and the Supreme Court upheld the order of the High Court and the order of the termination was held to be just and proper.

While stating the facts of that case as above I am considering the points which came to be discussed before the Supreme Court. The point urged before the Supreme Court was that the workman was holding a responsible post and the attempt of the workman to send away the pulleys elsewhere which belongs to the Company was really a betrayal of the trust and confidence which was absolutely necessary in the case of a person holding such a responsible post. These observations are aptly applicable to the facts of the present case if we compare the same to the facts of the instant case. In the instant case the workman who was working as a clerk whose duties and responsibility was to keep proper account of the commodities of the ration shop run by the Coop. Society had twice committed lapses namely giving sugar to another person without a voucher and attempting to take out the superfine rice. These two incidents are direct incidents which the management felt that these are instances of mis-conduct and the management lost confidence in the clerk who was holding the responsibility of commodities and who was holding a responsible post in the chief grain shop where he was the person incharge, there being just a weighman working under him. In the S. C. case the management had lost its trust and confidence in the workman and the reinstatement of such a person into the same position was held to be improper by the High Court and the Supreme Court held a similar view and the order of the Labour Court directing reinstatement was reversed by the superior courts. The Supreme Court while confirming the order has also placed reliance on 2 more cases of the Supreme Court in the case of Assam Oil Company V/s It Workmen reported in 1960 (1) F.L.R. page, 190 and Ruby General Insurance Company Ltd., V/s Chopra reported in 1970 (20) F.L.R. 59=1970 (1) L.L.J. page 63 and the 3rd ruling reported in 1970 (1) L.L.J. page 228. The sum and substance of the principles involved in these cases is that upon an overall consideration of the circumstances of the case, it is the apprehension of the employer that he has lost trust and confidence in the employee and as such it is not in the interest of the Company to retain the workman in its service is accepted as genuine and honest, a case should be considered to have been properly made out by the employer against reinstatement and that it is a case when compensation would meet the ends of justice.

I have considered the observations of the Supreme Court in the above rulings to see what is the position of the workman in this case and what relief he is entitled to. The first question is about the reinstatement and I feel that in view of the circumstances of the case and in view of the loss of confidence the reinstatement into services should not be directed and it would be improper to impose such a person on the Society, which has taken a well considered decision in dismissing the employee. I feel that the order of termination of services issued by the management is just and proper in the circumstances of the case and the same does not call for any interference. This then brings me to the consideration of the second aspect of the case namely the dues which the workman is entitled to and the dues calculated as below:

1. Salary for Feb., '84	— Rs. 375.00
2. Notice pay	— Rs. 375.00
3. Leave wages	— Rs. 375.00
4. Retrenchment compensation	— Rs. 1312.50
5. Gratuity	— Rs. 1470.00
Total	— Rs. 3907.50

These were the dues which the workman was entitled to at the time of termination of his services and it is a common ground that these were the dues which he was entitled to. Shri Rao while offering submissions on behalf of the management did submit before me that the management placed strong reliance on the audit report under which the shortages were

pointed out and they amounted to Rs. 4407.85 and the workman who was incharge of the grain shop was liable to account for the same. Hence, according to the management the workman was to pay Rs. 500.35 on account of the shortages even if the dues noted above were to be paid to him. Hence, according to him nothing is to be paid to the workman as compensation. I find that this proposition is not acceptable because at the time of termination of services shortages were not pointed to the workman and the shortages was not a point on which services of the workman were terminated. It appears that in due course of time the Auditor pointed the shortages and the management felt that the workman who was incharge of the shop was responsible to account for the shortages. I feel that the management has not properly brought forth this case of shortages and compensation against the workman and there is no justification for the management with holding the legitimate dues which the workman was entitled to at the time of termination of his services. It appears that the management cannot be allowed to club the figures of shortages with the amount of compensation due to the workman. I feel that the workman is entitled to the compensation though I do not consider it proper to direct the reinstatement of the workman. I therefore hold that the workman has failed to prove that the termination of his services by the employer amounts to retrenchment but on the contrary I hold that the action of the management in terminating the services of the workman, Dilip Bandodkar, Clerk w.e.f. 1-3-84 is just and legal and the same does not call for any interference. I, therefore, answer the reference in the schedule accordingly.

On the point of the relief if any to which the workman is entitled to, I hold that he is entitled to the compensation on account of termination of his services and the management will have to pay him the amount of Rs. 3907.50 which were due to him at the time of termination of his services. The management if it so chooses may take re-course to other provisions of law under the Coop. Societies Act or under any law for recovery of dues on account of shortages if proved from the workman. So far as the present reference

goes the point of shortages cannot be taken into consideration because the order of termination simplicitor has been taken into consideration and while upholding the order of termination the Tribunal has taken into consideration the amount of compensation which was legitimately due to the workman at the time of termination of his services and I have held that he is entitled to the amount as stated above.

In the result, I pass the following order:

#### ORDER

It is hereby held that the termination of the services of the workman by the employer is justified and legal and the workman is not entitled to relief of reinstatement in services with back wages and continuity of service. However, the workman is held to be entitled to compensation on account of the termination of services and the management of M/s. Small Industries Service Institute Co-operative Stores Ltd., Margao, Goa are directed to pay an amount of Rs. 3907.50 (Rupees three thousand nine hundred seven and paise fifty only) to the workman Shri Dilip Bandodkar of Margao.

There shall be no order as to costs. The reference is answered accordingly.

S. V. Nevagi  
Presiding Officer  
Industrial Tribunal

#### Corrigendum.

In the Order No. 7/7/87-I/PHD dated 2-5-88 published in the Official Gazette, Series II No. 6 dated 12-5-88 on page 66 the fifth line of the first para may be read as follows, instead of what was published:

"scale of Rs. 2200-75-2800-EB-100-4000"